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सं. 26] नई दिल्ली, दिसम्बर 16—दिसम्बर 22, 2012, शनिवार/अग्रहायण 25—पौष 1, 1934
No. 26] NEW DELHI, DECEMBER 16—DECEMBER 22, 2012, SATURDAY/AGRAHAYANA 25—PAUSA 1, 1934

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके।
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications Issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 12 दिसम्बर, 2012

आ.अ. 44.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं. 6/2009 में दिये गये उच्च न्यायालय, पटना के तारीख 5 सितम्बर, 2012 के आदेश को प्रकाशित करता है।

(आदेश अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/बिहार/(6/2009)/2012]

आदेश से,
हरबंस सिंह, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 12th December, 2012

О.Н. 44.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby published Order dated the 5th September, 2012 of the High Court of Judicature at Patna in Election Petition No. 6 of 2009.

IN THE HIGH COURT OF JUDICATURE AT PATNA Election Petition No. 6 of 2009

In the matter of an application under Section 81 of the Representation of the People Act, 1951 read with Article 329(b) of the Constitution of India

Mahesh Prasad Singh son of Late Chandrika Singh, Resident of Village Nuruddinpur, P.O.-P.S. Khusruper, District Patna ...Petitioner

Versus

Satrughan Sinha son of Late Bhuvneshwari Prasad Sinha, Resident of House No.102, D-Block, Kadamkuan. P.O. Kadamkuan, P.S. Kadamkuan, Patna-800003 ... Respondent

APPEARANCE :

For the Petitioner : Mr. Arun Kumar Tiwari, Advocate

For the Respondent : M/s. S. N. P. Sharma, Sr. Adv., Manik Vedsen, Amarendra Kr. Singh, Subhash Chandra Bose, Advocates

**CORAM : HONOURABLE MR. JUSTICE
V. N. SINHA C.A.V. JUDGMENT**

V. N. Sinha. J.

By filing this election petition under Section 81 of the Representation of the People Act, 1951 (hereinafter referred to as the Act) petitioner has questioned the legality and validity of the election of sole respondent from 30-Patna Sahib Parliamentary Constituency held during General Election, 2009 vide declaration dated 30-6-2009 on the ground that nomination paper of the election petitioner for the said election was erroneously rejected and thereby election of the sole respondent is fit to be declared as void under Sub-section (1)(c) of Section 100 of the Act.

2. Election petitioner filed his nomination paper on 18-4-09 for contesting election from 30-Patna Sahib Parliamentary Constituency as a candidate of Lok Dal Party. Having filed the nomination paper petitioner was granted receipt, Annexure-2 asking him to appear for scrutiny of nomination paper on 20-4-2009 at 11 A.M., check list of documents, Annexure-I indicated that required documents have been filed by the petitioner along with nomination paper. Having filed the nomination paper petitioner was telephonically informed to come to the confidential section of the Office of the Returning Officer on 19-4-2009 at 1.40 P.M. to receive an urgent letter. In the light of the instruction petitioner came to the confidential section at 2 P.M. but was kept waiting for an hour and thereafter told that his presence is no more required, whereafter petitioner returned back. In compliance of the instruction given in the receipt to appear for scrutiny of his nomination paper on 20-4-2009 at 11A.M. petitioner appeared for scrutiny of his nomination paper, he was called in the chamber of the Returning Officer and after scrutiny of his nomination paper no objection was raised by the Returning Officer as he was satisfied with the contents of the nomination paper and asked the petitioner to leave. The list of validly nominated candidate was published on the notice board on 21-4-2009 at 4.30 P.M. whereafter petitioner came to know that his name is not included in the list of the validly nominated candidate, petitioner submitted application before the Magistrate on duty, who neither received application nor allowed the petitioner to appear before the Returning Officer and thus petitioner was deprived of the reason which persuaded the Returning Officer to reject his nomination paper. On 22-4-2009 petitioner again visited the office of the Returning Officer but there was none to receive his application with requisition for grant of certified copy of the order by which his nomination paper was rejected. The petitioner thereafter communicated the illegal rejection of his nomination paper to the Chief Election Commissioner, New Delhi under fax message dated 22-4-2009 which was transmitted at 14.18 hours annexing the copy of

representation dated 21-4-2009. Both the applications are contained in Annexures-3, 3/1 to the election petition. In paragraph-13 of the election petition petitioner has stated that when the free copy of the order rejecting his nomination paper was not given to the petitioner he was compelled to file requisition no. 429 dated 25-4-2009, Annexure-4 for obtaining certified copy of the order rejecting his nomination paper. In paragraph-14 of the election petition petitioner has submitted that he was never furnished the certified copy pursuant to requisition dated 25-4-2009. In paragraph-15 of the election petition petitioner has stated that on 25-6-2009 he came to the office of the Returning Officer/election office and was informed that he is required to deposit Rs. 800 for the non-judicial stamp excluding 170 folios for obtaining certified copy of the order rejecting his nomination which could not be deposited/submitted for want of availability of personnel in the election office. In paragraph-16 of the election petition petitioner has asserted that as neither the free copy nor certified copy of the order rejecting his nomination paper was given, he had no option but to file the election petition without annexing the order rejecting his nomination paper. In paragraph-17 of the election petition it is stated that petitioner was not being given certified copy of the order rejecting his nomination paper as the authorities wanted to restrain him from filing the instant election petition within the period of limitation i.e. 45 days from the date of declaration of the result of the impugned election i.e. 30-6-2009. In paragraph-18 of the election petition it has been asserted that refund of the security deposit of Rs. 10,000 has also not been allowed to the petitioner. In paragraphs-20, 21, 22 petitioner has asserted that there were 33 candidates who desired to contest the impugned election but as the Electronic Voting Machine (E.V.M.) could provide for only 16 candidates Returning Officer adopted the tactics to deliberately reject the nomination paper of remaining candidates including the petitioner so as to enable him to conduct the impugned election with only one E.V.M. Such tactics was adopted by the present Returning Officer even in the 31-Patliputra Parliamentary Constituency where also 16 candidates were allowed to contest the election. In paragraph 23 of the election petition election petitioner has stated that he is a senior citizen, a social activist who believes in free and fair-election but the conduct of the Returning Officer while conducting the scrutiny of nomination paper of petitioner and others was not at par with the expectations under the law, In paragraph-24 of the election petition petitioner has asserted that he is unaware of the ground on which his nomination paper was rejected, In paragraph-25 of the election petition petitioner has asserted that because of omission and commission of the Returning Officer he was deprived of his statutory right to contest the Parliamentary election. In paragraph-26 of the election petition petitioner has asserted that he is attached to the

people and their ground realities and in the event, his nomination paper would have been accepted there was every chance of his victory as he is not only a trade union leader but also rendering service to the downtrodden. In paragraph-28 of the election petition petitioner has asserted that he was prevented from contesting the election because of the latent administrative pressure as there is alliance between the Janta Dal United (JD) and the Bhartiya Janta Party (BJP) for ensuring the victory of the sole respondent who is an important leader of the BJP. In paragraph-29 of the election petition petitioner asserted that earlier also he had contested Assembly Election, 2005 in February, 2005 from Bakhtiyarpur Assembly Constituency and he filled up the nomination form for 30-Patna Sahib Parliamentary Constituency in the same manner in which he had filled up the nomination form for Assembly Election, 2005 held in February, 2005, which was not rejected. In paragraph-30 of the election petition petitioner has asserted that the nomination paper filed by him for contesting 2009 Parliamentary Election from 30-Patna Sahib Parliamentary Constituency has been improperly rejected. In paragraph 31 of the election petition petitioner has made prayer to set aside the election of the sole respondent held during 2009 Parliamentary Election from 30-Patna Sahib Parliamentary Constituency with direction to the authorities to hold fresh election for the said constituency.

3. Sole respondent tiled written statement stating In paragraph-1 that the election petition is not maintainable and is fit to be dismissed. In paragraph-2 of the written statement sole respondent has stated that election petition is fit to be dismissed summarily under Sub-section-(1) of Section 86 of the Act for non-compliance of Section 81 of the Act as the election petition does not contain the date of the impugned election as also the full signature of the election petitioner on every page of the election petition, except on the last page beneath the prayer portion. In paragraph-3 of the written statement sole respondent has stated that contents of paragraphs-2, 3, 4, 6, 9 to 11, 14, 15, 18, 20 and 21 appears to be in the nature of corrupt practice but in fact the allegations contained in the said paragraphs are not corrupt practice as defined under Section 123 of the Act. In paragraphs-4, 32 of the written statement sole respondent has stated that the allegations contained in paragraph-28 of the election petition is allegation of corrupt practice as per Sub-section (7) of Section 123 of the Act but election petitioner has miserably failed to give full particulars and statement of the corrupt practice, as is required under Sub-section (1)(b) of Section 83 of the Act. It is further stated in the said paragraph that election petitioner has not stated either in paragraph-28 or in any other paragraphs of the election petition the manner in which sole respondent solicited help from the ruling dispensation as also the officials conducting the election for success

of his election indicating the date, place and time of soliciting such help from the ruling dispensation or the officials conducting the election. It has also not been stated in the election petition the name of the functionaries of the ruling dispensation including the officials who have rendered help to the sole respondent for success of his election. For failure to furnish the aforesaid particulars in the election petition it has further been stated in the said paragraph that the election petition is fit to be dismissed for non-compliance of the mandatory provisions of Section 83 of the Act read with order 7 Rule 11 of the C.P.C. In paragraph-5 of the written statement sole respondent has stated that the verification and affidavit in support of the election petition is defective, as the same is not in accordance with order 6 Rule 14 of the C.P.C. In paragraph-7 of the written statement sole respondent has denied the averments made in paragraph-2 of the election petition asserting that petitioner while submitting his nomination paper did not comply the mandatory provisions of Section 33 of the Act read with form 2A, Part III (a) of the prescribed form of the nomination paper issued under Rule-4 of the Conduct of Election Rules, 1961 as he did not declare his actual age in the relevant column of Part III (a) of the nomination form, which indicated that he has completed 25 years of age, though in the verification and affidavit enclosed with the nomination form he indicated his age as 60 years. In paragraph-10 of the written statement sole respondent has stated that the petitioner has not stated in the election petition that the signature of his 10 proposers were verified by the Returning Officer or any other authorized officer including the fact that petitioner had made available his 10 proposers before the Returning Officer for verification of their signatures. Aforesaid omission according to the sole respondent is sufficient ground to reject the nomination paper of the election petitioner. In paragraph-11 of the written statement sole respondent has stated that the contents of paragraph-6 of the election petition is not relevant for the decision of the election petition as the contents thereof is a matter between the petitioner and the staff and others of the confidential section of the office of the Returning Officer. In paragraph-12 of the written statement sole respondent has stated that Annexure-2 in form 6 of the nomination paper is the receipt showing filing of the nomination paper by the election petitioner asking him to appear for scrutiny of his nomination paper on the date and time indicated in the notice. In the said paragraph it has further been stated that the contents of paragraph-7 of the election petition is incorrect besides being motivated. It has further been stated in the said paragraph that scrutiny of all the nomination papers filed for contesting the impugned election was conducted by the Returning Officer on the date and time indicated in Annexure-2 in presence of the candidates including the petitioner and

during the scrutiny of the nomination paper of the election petitioner it was found that he did not disclose his age in part-III column-(a) of his nomination paper, rather he mentioned therein that he has completed 25 years of age but in accordance with law petitioner should have declared his age in the said column. According to the sole respondent the omission of the petitioner to mention his age in column-(a) of part III of the nomination form is a substantial defect in the nomination paper and Returning Officer having noticed the said defect in the nomination form of the election petitioner rejected the nomination paper of the election petitioner in his presence. Petitioner being fully satisfied with the said defect and the rejection of his nomination paper left the place of scrutiny after the rejection of his nomination paper. In paragraph-14 of the written statement sole respondent has stated that the averments made in paragraph-9 of the election petition is wrong and motivated as according to the sole respondent Returning Officer had given full opportunity to all the candidates including the petitioner to examine the nomination paper of all the candidates. Any statement made to the contrary in the election petition is denied by the sole respondent. In paragraph-15 of the written statement sole respondent has denied the statement made in paragraph 10 of the election petition and has stated that the said statement has been made only for the purpose of election petition. It has further been stated in the said paragraph that as petitioner himself admitted that he was present at the time of scrutiny and he was well aware of the fact that his nomination paper suffers from material and substantial defect and his nomination paper was rejected by the Returning Officer without any protest by the petitioner as he was satisfied with the decision of the Returning Officer. In paragraph-16 of the written statement sole respondent has denied the contents of paragraph-11 read with contents of representation, Annexures-3, 3/1 of the election petition and has further stated that the contents of representation Annexures-3, 3/1 are merely preparation for filing election petition and as such the entire statement along with Annexures are afterthought, irrelevant and nothing to do with the validity of the nomination paper of the petitioner because the nomination paper of the petitioner was rejected by the Returning Officer during scrutiny in presence of the petitioner as his nomination paper suffered from substantial and material defect and as such the Returning Officer had no option but to reject the nomination paper of the election petitioner. In paragraph-17 of the written statement sole respondent has replied the contents of paragraph-12 of the election petition and stated that the contents of said paragraph is irrelevant and not in accordance with law and only by way of preparation of ground or document for filing the election petition. In paragraph-19 of the written statement sole respondent has denied the contents of paragraph-14 of the election

petition stating that the contents of said paragraph is the personal story conveniently set forth by the election petitioner, which is nothing but preparatory step for filing the election petition as nomination paper of the election petitioner was rightly rejected in his presence during the scrutiny proceeding. In paragraph-20 of the written statement sole respondent has considered the averments made in paragraph-15 of the election petition and stated that the contents of paragraph under reply is mere excuse of the petitioner as he himself did not deposit the required non-judicial revenue stamp and the folios for grant of certified copy of the order rejecting his nomination paper. In paragraph-21 of the written statement sole respondent has stated that the contents of paragraph-16 of the election petition is a lame excuse of the petitioner for not annexing the copy of his nomination paper and the order rejecting the same, which is vital omission and the election petition is fit to be dismissed summarily for failure to disclose complete cause of action. In paragraph-22 of the written statement sole respondent has denied the story of harassment by the Returning Officer as disclosed by the petitioner in paragraph-17 of the election petition. In paragraph-24 of the written statement sole respondent has replied the statement made in paragraph-19 of the election petition and has termed the statement as irrelevant because petitioner being out of contest after rejection of his nomination paper has no personal concern with the electronic voting machine. In paragraph-25 of the written statement sole respondent has considered the averments made in paragraph-20, 21 of the election petition and has stated that those statements are imaginary and far from truth because every nomination paper was rejected in accordance with law. In paragraphs-27, 28, 29, 30, 31 of the written statement sole respondent has considered the averments made in paragraphs-22, 23, 24, 25, 26, 27 of the election petition and has stated that those statements are not only incorrect but are also emphatically denied by the sole respondent as according to the sole respondent Returning Officer while receiving the nomination paper as also during scrutiny of the same had taken the required steps in presence of the observers appointed by the Election Commission of India. In paragraph-32 of the written statement sole respondent has stated that the statement made in paragraph-29 of the election petition is not at all relevant for the consideration of the present election dispute. The so called past history of the petitioner has no relevance and bearing for the consideration of his nomination paper for the impugned election. In paragraph-34 of the written statement sole respondent has stated that the statement made in paragraph-3 of the election petition is wholly incorrect and false as his nomination paper was properly rejected strictly in accordance with law and also in his presence, as such, according to the sole respondent petitioner is not justified to raise contrary submission.

In paragraph-35 of the written statement sole respondent has stated that the election petition is not tenable in law for the reason that his nomination paper was properly rejected In his presence and also strictly in accordance with law.

4. In the light of the pleadings of the parties as many as 14 issues were framed by this Court under order no.13 dated 20-5-2010 on the basis of petition dated 20-4-2010 of the election petitioner and two issues were framed at the request of the sole respondent. During hearing of the election petition, however, one issue which emerged for consideration is as to whether the nomination paper of the election petitioner was improperly rejected. Aforesaid issue is to be considered in this election petition in the light of the pleadings and the evidence led on behalf of the parties,

5. In support of the election petition election petitioner examined three witnesses i.e. P.W.-1 Sri Ajit Priyadarshi son of election petitioner, P.W.-2 the election petitioner himself and P.W.-3 Sri Bidhan Chand Rana, son of Rajendra Nath Das. P.W.-1 Sri Ajit Priyadarshi stated in his examination in chief that he accompanied the election petitioner and others to the office of the Returning Officer of 30-Patna Sahib Parliamentary Constituency on 17-4-2009 at 1.30 P.M. for filing the nomination paper of the election petitioner for contesting the Parliamentary Election, 2009 and reported their arrival to the Magistrate on duty who asked them to wait till 3 P.M. According to P.W.-1 election petitioner could not file his nomination paper on 17-4-2009 as on that day Sri Shekhar Suman a candidate for the Parliamentary Election remained inside the chamber of the Returning Officer for filing his nomination paper and came out of the chamber of the Returning Officer at about 3 P.M. and as the time for presenting the nomination paper was over witness along with election petitioner and others had to return back. The witness again went to the office of the Returning Officer on 18-4-2009 at 10.30 A.M. Nomination paper of the election petitioner was received at 12.01 P.M. and receipt to that effect was also given to the election petitioner, P.W.-1 further states that on the date of scrutiny of the nomination paper i.e. 20-4-2009 he along with election petitioner came to the office of the Returning Officer, 30-Patna Saheb Parliamentary Constituency at 10.30 A.M. Election petitioner was called inside the chamber of the Returning Officer and came back from the chamber and was asked to wait and the election petitioner waited outside the chamber of the Returning Officer till 5 P.M. of 20-4-2009 but by that time notice of the validly nominated candidate was not affixed on the notice board. In paragraph-20 of the examination in chief P.M.-1 admits that he was one of the 10 proposers of the election petitioner. In paragraphs-6, 7 of the cross-examination P.W.-1 admits that at the time of filing of the nomination paper by the election petitioner for the

impugned election the age of election petitioner was 62 years but such fact has not been stated in part-III of the nomination paper by the election petitioner. In paragraph-10 of the cross-examination P.W. 1 has further clarified the statement made by him in sub-paragraph-(vi) of paragraph-1 of his examination in chief and has stated that he along with election petitioner and others visited the office of the Returning Officer on 18-4-2009 at 10.30 A.M. (the others in the paragraph is for the nine proposers). In paragraph-16 of the cross-examination P.W.-1 further states that at the time of scrutiny of nomination paper of the election petitioner he and other proposers were outside the chamber of the Returning Officer. In paragraphs-22, 23 of the cross examination P.W.-1 denied the suggestion that nomination paper of the election petitioner was also liable to be rejected on the ground of non-verification of signature of all the proposers as all the proposers remained present not only on the date of filing of the nomination paper on 18-4-2009 but also at the time of scrutiny of the nomination paper on 20-4-2009.

6. P.W.-2 is the election petitioner himself. In paragraphs-4, 5 of the examination in chief P.W.-2 stated that he filled up his nomination paper correctly and filed the same on 18-4-2009 in the office/chamber of the Returning Officer situate at Collectorate, Patna, whereafter receipt was granted indicating that scrutiny of the nomination paper shall be conducted on 20-4-2009. In paragraph-7 of the examination in chief P. W.-2 stated that no defect was pointed out by the Returning Officer at the time of scrutiny of his nomination paper which was also not shown to him but it was communicated by the Returning Officer that the nomination paper of the election petitioner has been correctly filled up. In paragraph-8 of the examination in chief P. W.-2 stated that on the date of scrutiny he waited in the office of the Returning Officer until 6 P.M. by which time neither any list of validly nominated candidate was affixed on the notice board nor copy of rejection order of the nomination paper was handed over to him. In paragraph-16 of the cross-examination P.W.-2 stated that at the time of presentation of his nomination paper he had gone along with his 10 proposers to the office of the Returning Officer as was directed by the authorities. In paragraph-17 of the cross examination P. W.-2 stated that out of 10 proposers only four were allowed to enter the chamber of the Returning Officer. In paragraph-18 of the cross examination P. W.-2 stared that he had gone along with 10 proposers for presenting his nomination paper as he was candidate from unrecognized party and law required that candidate of unrecognized party must appear for filing his nomination paper along with his all the 10 proposers whose signature if necessary may be verified by the Returning Officer. In paragraph-20 the witness further states that on the date of scrutiny as well he went to the office of the Returning Officer along with all his

proposers. In paragraph-22 P.W.-2 states that when Returning Officer did not ask for verification of the signature of 10 proposers, he had no occasion to insist for such verification. In paragraph-27 of the cross-examination P.W.-2 stated that he filled up his nomination paper himself. In paragraph-28 of the cross examination he stated that he mentioned his age in nomination paper as above 25 years, which is the qualifying age for contesting the impugned election. In paragraph-29 of the cross examination P.W.-2 stated that there was no instruction in the nomination form to the candidate to furnish his exact age in the nomination paper, as such, he indicated in the nomination paper that he has completed more than the minimum age required for becoming a candidate. In paragraph-30 of the cross examination P.W.-2 stated that there is blank in the age, column of the nomination paper because different age is provided for member of the legislative council, M.L.A., M.P. and others. In paragraph-31 of the cross examination P.W.-2 stated that there is no direction of the Election Commission of India to furnish the exact age of the candidate in the nomination paper. In paragraph-32 of the cross examination P.W.-2 stated that in the request form, form-26 and affidavit furnished by him along with nomination paper he indicated his age as 60 years. In paragraph-33 of the cross-examination the witness stated that he was not required to indicate in part-III of the nomination form his exact age. In paragraph-34 of the cross examination P.W.-2 stated that according to him his nomination paper was not rightly rejected on the ground that he indicated his age more than 25 years in part-III of the nomination paper.

7. P.W.-3 Sri Bidhan Chand Rana was also a candidate to contest the 2009 Parliamentary Election from 30-Patna Sahib Parliamentary Constituency. In paragraph-4 of his examination in chief P.W.-3 stated that he was not allowed to see the nomination paper of election petitioner and others, which he wanted to see. In paragraph-5 of his examination in chief P. W.-3 stated that he had no occasion to see the order of rejection after scrutiny of nomination paper of election petitioner was concluded. In cross-examination P.W.-3 stated that he had indicated his age as 33 years in part III of the nomination paper.

8. On behalf of sole respondent three official witnesses have been examined, namely, R.W.-1 Bijendra Jha who at the relevant time served as Additional District Magistrate (General), Patna and was assigned the work of verification of signature of the proposers put on the nomination paper filed by the independent candidate for contesting the 2009 Parliamentary Election from 30-Patna Sahib Parliamentary Constituency. R.W.-2 Sri Jitendra Kumar Sinha is the Returning Officer of 30-Patna Sahib Parliamentary Constituency in 2009 Parliamentary Election. R.W.-3. Sri Anil Kumar at the relevant time served as

Deputy Election Officer, Patna and was Incharge of the confidential section of the office of the Returning Officer.

9. R.W.-I stated in his examination in chief that during 2009 Lok Sabha Election he was entrusted with the work of verification of the signature of proposers of the independent candidate so as to verify the genuineness of the signature of the proposer on the nomination paper. In paragraph-3 of the examination in chief the witness stated that as per instruction issued number of independent candidates came on 20-4-2009 along with their proposers for verification of the signature of the proposers who put their signature adjacent to their respective signature on the nomination paper filed by the candidate. In paragraph-12 of the cross examination R.W.-1 again reiterated that he was authorized by the Returning Officer alone to help him in verification of the signature of the proposers of the different candidates. In paragraph-13 witness further clarified that Returning Officer had issued written instruction by way of letter asking him to help him in verification of the signature of the proposers. In paragraph-15 R.W.-1 stated that he is not supposed to know the grounds of rejection of nomination paper of the election petitioner as it was the duty of the Returning Officer to consider the same. In paragraph-16 the witness further states that he does not remember the exact number of observers present in the chamber of the Returning Officer at the time of presentation of nomination paper but observers were available at the time of presentation of the nomination paper. In paragraphs-16, 17 R. W.-1 further stated that observers were present in the chamber of the Returning Officer at the time of presentation, scrutiny of the nomination paper but he does not remember the number and the name of the observers present.

10. R.W.-2 Sri Jitendra Kumar Sinha the Returning Officer stated in his examination in chief that the last date for filing the nomination paper for the impugned election was 18-4-2009 and the date of scrutiny of the nomination paper was scheduled for 20-4-2009. In paragraph-3 of his examination in chief the Returning Officer stated that it was considered necessary for verifying the genuineness of the proposers of the independent candidate who had filed their nomination paper and as per instruction Sri Anil Kumar Deputy Election Officer and also Incharge of confidential section had called the independent candidates including the election petitioner on 19-4-2009 and directed them to bring all their proposers on the date of scrutiny for verification of their signature so as to verify the genuineness of the signature of the proposer and to receive instruction in this regard. In paragraph-4 of his examination in chief R.W.-2 has stated that Sri Anil Kumar Deputy Election Officer informed the election petitioner telephonically and responding to telephonic communication the election petitioner came and met him

and was informed that he had not disclosed his correct and specific age in the nomination form. The election petitioner refused to respond and he did not correct his age, as such his nomination paper was rejected for non-disclosure of specific correct age in the nomination paper. In paragraph-5 of the examination in chief the Returning Officer stated that for signature verification to ascertain the genuineness of proposers officers were deputed on the date of scrutiny of nomination paper but the election petitioner did not come with his proposers for verification of the genuineness of their signature. In paragraph-6 of his examination in chief R. W.-2 stated that candidates were given full opportunity and liberty to examine the nomination paper of other candidates and scrutiny of nomination paper was done in presence of Central Election Observer deputed by the Election Commission of India as well as candidates who had filed nomination paper and had come on the day of scrutiny. In paragraph-7 of the examination in chief RW-2 stated that he prepared and maintained separate order sheet for the scrutiny of the nomination paper of each candidate and accordingly, he prepared separate order sheet regarding scrutiny of the nomination paper of the election petitioner, which contains the ground for rejection of the nomination paper of the election petitioner. In paragraph-3 of the cross-examination RW-2 stated that he issued office order appointing Sri Anil Kumar as Deputy Election Officer. In paragraph-5 of the cross-examination R.W.-2 stated that notice was issued to the election petitioner for making available his proposers for verification of their signature and for service of such notice election petitioner was telephonically informed. After receipt of the telephonic information election petitioner also came to the office of the Returning Officer but refused to accept the written notice. In paragraph-6 of the cross-examination R. W.-2 stated that it is true that in order dated 20-4-2009 by which he rejected the nomination paper of the election petitioner he did not record that election petitioner did not receive the notice for making available his proposers for verification of their signature. The witness, however, volunteered in the said paragraph that he did not record the aforesaid fact in the order dated 20-4-2009 as the nomination paper of the election petitioner was rejected on some other ground i.e. his omission to specify his age in the nomination paper, which is the primary document for the nomination. In paragraph-7 of the cross-examination R.W.-2 further stated that defect of substantial nature was noticed in the nomination paper of the election petitioner. In the light of the defect no further steps was required to be taken to inform the election petitioner but with a view to give him opportunity telephonic information was given to the election petitioner to come and rectify the defect noticed in his nomination paper. The election petitioner, although came to the office but in his own wisdom chose not to either remove the defect or to receive the notice. In

paragraph-8 of the cross-examination R.W.-2 stated that election petitioner has already mentioned in his election petition that pursuant to telephonic information he came to the office of the Returning Officer, besides such admission the Returning Officer had no other evidence of having given telephonic information to the election petitioner. In paragraph-10 of the cross-examination R.W.-2 further stated that on 19-4-2009 when the election petitioner was called to remove the defect in the office of the Returning Officer his nomination paper was very much available and with reference to the said nomination paper he was asked to remove the defects. In paragraph 12 of the cross-examination R.W.-2 stated that election petitioner did not mention in the nomination paper that he has completed 60 years of age. In paragraphs-13, 14 R.W.-2 stated that form-26 is an addendum enclosure to the nomination paper which does not form part of the nomination paper as primary document. In paragraph-15 of the cross-examination R.W.-2 stated that in the affidavit annexed with form-26 the election petitioner indicated his age as 60 years. The witness, however, volunteers that the affidavit primarily dealt with his movable and immovable assets. In paragraph-16 of the cross-examination R.W.-2 stated that Sri Anil Kumar Deputy Election Officer had asked the election petitioner to correct his age in the nomination form but he refused to correct. In paragraph-17 of the cross-examination R. W.-2 denied the suggestion stating that the same is bordering on unfairness that election petitioner was not given opportunity to correct his age in the nomination form when he has come to his office on 19-4-2009. In paragraph-15 of the cross-examination R.W.-2 stated that election petitioner visited the office of the Returning Officer on 19-4-2009 and in spite of request did not remove the defect about his age in the nomination form, it was not deemed necessary to make correction therein.

11. R.W.-3.Sri Anil Kumar who was appointed as Deputy Election Officer has stated in paragraph-2 of his examination in chief that on instruction of the Returning Officer he contacted independent candidate on telephone and directed them to bring their all proposers on 19-4-2009 for verification of their signature and to receive letter in this regard. In paragraph-3 of the examination in chief R.W.-3 further stated that responding to the telephonic instruction election petitioner came and was advised to receive the letter and also to contact the Returning Officer as the nomination paper filed by him was not in order. In paragraphs-4, 5 R.W.-3 stated that he took the election petitioner to the Returning Officer who pointed out to the election petitioner that in the nomination paper he had not correctly filled up his age and he was given opportunity to make necessary correction but election petitioner did not make correction of his age in the nomination paper and went away even without receiving the letter. In paragraph-4 of cross-examination R.W.-3 has stated that he telephonically

informed the election petitioner from confidential section of the office of the District Magistrate, Patna on 19-4-2009 to appear in the office of the District Magistrate for verification of signature of his proposers. In paragraph-5 the witness further stated that he never asked the election petitioner to correct his age indicated in the nomination paper. In paragraph-6 of the cross-examination R.W.-3 stated that he took the election petitioner to the chamber of the Returning Officer in his confidential office from his chamber where nomination paper of the election petitioner was available from before.

12. With reference to the pleadings made and the evidence led by the parties, learned counsel for the petitioner submitted that order dated 20-4-2009 rejecting the nomination paper of the petitioner on the ground that he did not mention his correct age in part III of his nomination paper for contesting the impugned election suffers from the vice of arbitrariness and is fit to be declared as erroneous as from the evidence of R.W.-2 Returning Officer in paragraphs-10, 12, 13, 15, 16, itself it would appear that petitioner had mentioned his age as 60 years in form 26, which was supported by an affidavit as also other affidavit furnished by the petitioner along with nomination paper, which according to the Returning Officer was also an addendum enclosure to the nomination paper and in appreciation of the disclosure of the correct age by the petitioner in form 26 and other affidavit filed along with nomination paper enclosed with form 26 Returning Officer should have ignored the incorrect age mentioned by the petitioner in part III of the nomination paper and accepted the same so as to enable the petitioner to contest the impugned election. In this connection, it is also pointed out that the story set forth by the Returning Officer in paragraphs-7, 10, 16 of his cross-examination that on 19-4-2009 election petitioner was called in the office of the Returning Officer to remove the defect in his nomination paper and in presence of the Returning Officer, R.W.-3 Sri Anil Kumar Deputy Election Officer asked the election petitioner to correct his age in the nomination paper but election petitioner refused to correct the same is not to be accepted in view of the evidence of R.W.-3 Sri Anil Kumar Deputy Election Officer in paragraphs-4, 5 of his cross-examination where R. W.-3 categorically stated that he telephonically informed the petitioner on 19-4-2009 from the confidential section of the office of the District Magistrate. Patna to come to the office of the District Magistrate for verification of signature of his proposers but in paragraph-5 R.W.-3 categorically stated that he never asked the election petitioner to correct his age indicated in the nomination paper. It is submitted with reference to the evidence of R. W.-3 that as petitioner was not given any opportunity to correct his age mentioned in part III of the nomination form the same should have been ignored in view of the age of the petitioner indicated in form 26 supported by an affidavit

and other affidavit furnished by the petitioner along with nomination paper. In this connection, learned counsel for the petitioner also relied on paragraphs-3, 19 of the circular of the Election Commission of India dated 27-3-1003 issued under Article 324 of the Constitution of India and submitted that in form 26, which is supported by an affidavit and other affidavit to be furnished by the candidate along with nomination paper petitioner indicated his age as 60 years and in such view of the matter entries made by the petitioner in Part III(a) of the nomination form that petitioner has completed 25 years of age should have been ignored as the said statement does not indicate the age of the petitioner on the date of presentation of the nomination paper. Learned counsel for the petitioner also referred to Section 30 of the Act which provides for appointment of dates for nomination, scrutiny, withdrawal of candidature date of poll and completion of election. He also referred to Sub-sections-(1), (4) of Section 33 of the Act, which provides for presentation of nomination paper and requirement of a valid nomination and submitted that petitioner has been deprived of his statutory right to contest the impugned election, although he presented his nomination paper before the Returning Officer in the prescribed format within the required time but the same was improperly rejected. As regards the statement made by the petitioner in Part III (a) of the nomination paper that he has completed 25 years of age, learned counsel for the petitioner submitted that such statement has been made by the petitioner in the light of the provisions contained in Article 84 of the Constitution of India and Sub-section-(2) of Section 36 of the Act, which provide for qualification for membership of Parliament and for contesting election to the House of the People one must not be less than 25 years of age and in view of contents of Article 84 of the Constitution petitioner stated in Part III (a) of the nomination form that he has completed 25 years of age but also made clear in the affidavit that his actual age on the date of filing of nomination was 60 years. In this connection, he also referred to paragraphs-12.1 and 12.1(a) at page 27 of the Handbook For the Candidate, 2009 and submitted that the candidate while assenting to his nomination made by his proposer he is required to make a declaration in the nomination paper, itself about his age that he must not be less than 25 years of age. It is submitted that in the light of the provisions contained in Article 84 of the Constitution, Sub-section-(2) of Section 36 of the Act and paragraphs-12.1 and 12.1(a) at page 27 of the Handbook For The Candidate, 2009 petitioner mentioned in Part III (a) of the nomination form that he has completed 25 years of age which was more than the minimum age required for being eligible for contesting the impugned election and in such view of the matter, Returning Officer ought not to have rejected the nomination paper of the petitioner. Learned counsel for the petitioner also referred to Section 38 of

the Act, which provides for publication of list of contesting candidates and it is submitted that in the instant case Returning Officer published the list of contesting candidates on 21-4-2009. It is also submitted that election petitioner without wasting any time, no sooner the list was published attempted to file application, Annexure-3/l to the election petition to know the cause of rejection of his nomination paper when certified copy of order dated 20-4-2009 rejecting his nomination paper was not supplied to him free of cost. Petitioner was also not allowed to visit the Returning Officer on 21-4-2009 and was thus compelled to communicate the uneven happenings by fax message dated 22-4-2009, Annexure-3 to the Chief Election Commissioner, New Delhi. It is further stated that Returning Officer in his cross-examination has claimed to have provided sufficient opportunity to the petitioner on 19-4-2009 i.e. a public holiday to correct his age in part III of the nomination form through R.W.-3 Sri Anil Kumar Deputy Election Officer but R. W.-3 has refuted such claim.

13. In support of the aforesaid submission learned counsel for the petitioner relied on the judgment of the Supreme Court in the case of Rattan Anmol Singh and another Vs. Ch. Atma Ram and others, AIR 1954 Supreme Court 510. Nomination paper of respondent Atma Ram was rejected on the ground that his proposer put thumb mark on the nomination paper, which was not attested. The Returning Officer held that without attestation the thumb mark was invalid and so rejected the nomination paper. The question which arose in the election dispute is as to whether Returning Officer was right in rejecting the nomination paper. A subsidiary question also arose, namely, whether assuming attestation to be necessary under the Rules and omission to obtain the required attestation amounts to technical defect of unsubstantial character, which the Returning Officer was bound to disregard under Section 36 (4) of the Act. The Supreme Court held that the Returning Officer was bound to reject the nomination paper under Section 36(2)(d) of the Act as there was a failure to comply with Section 33 of the Act as attestation is not a mere technical or unsubstantial requirement. When the law enjoins the observance of a particular formality it cannot be disregarded. With reference to the aforesaid judgment it is submitted that in the present case when the law requires to conduct the scrutiny at a particular date, place and time i.e. 20-4-2009 as notified in the election programme including part-VI of the nomination paper there was no occasion for the Returning Officer to offer the candidate to correct his age in the nomination paper on 19-4-2009, which was a public holiday and that too at the residential chamber which is made for the Collector of the district and not for the Returning Officer. It is submitted that Section 30 of the Act also does not provide for the scrutiny of nomination paper on a day other than one appointed in

the notification of the Election Commission published in the Official Gazette.

14. Learned counsel further reiterated his aforesaid submission with reference to the judgment of the Supreme Court in the case of Deep Chand Vs. State of Rajasthan, AIR 1961 Supreme Court 1527, State of Uttar Pradesh Vs. Singhara Singh and others, AIR 1964 Supreme Court 358 and in the case of Chief Information Commissioner and another Vs. State of Manipur and another, 2012 (1) PLJR Supreme Court 313 and submitted that it is well recognized Rule that where power is given to do a certain thing in a certain way the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. In the light of the aforesaid well settled proposition of law learned counsel submitted that Returning Officer was certainly prohibited from performing the act of scrutiny in a manner other than the one provided under the Act and submitted that Returning Officer could not have asked the petitioner to correct his age in the nomination paper on a public holiday by transgressing the mandate of law.

15. Learned counsel for the petitioner also relied on the judgment of the Supreme Court in the case of A.C. Jose Vs. Sivan Pillai and others, AIR 1984 Supreme Court 921 and submitted that Election Commission of India is vested with the power of superintendence, direction and control of all elections to Parliament and State Legislature as also to the office of President and Vice-President but such power of superintendence is to be exercised to supplement the provisions of the Act and not to supplant the same and having held as above the Supreme Court set aside the impugned election in which on several polling booths electronic voting machine was used under the direction of the Election Commission of India without there being any provision for casting of vote through electronic voting machine as user of electronic voting machine on the several polling booths without there being any provision in the Act for use of electronic voting machine in the election amounted to supplanting the provisions of the Act.

16. Learned counsel for the petitioner next relied on the judgment of the Supreme Court in the case of P.T. Rajan Vs. T.P.M. Sahir and others. (2003) 8 Supreme Court Cases 498 and G.V. Sreerama Reddi and another Vs. Returning Officer and others, (2009) 8 Supreme Court Cases 736 and submitted that Act is a special statute and self contained code. While interpreting such a statute the court must consider the intention of the Legislature and read the provisions of statute specifically and strictly. With reference to the said judgment it is submitted that Article 84 of the Constitution has been referred to in Section 36(2)(a) of the Act in the light thereof petitioner specifically declared in part III of the nomination paper that he is not less than 25 years of age, rather he has

completed 25 years of age, which is the qualifying age for contesting the election to the House of People and in such view of the matter the nomination paper of the petitioner ought not to have been rejected by the Returning Officer under order dated 20-4-2009.

17. He further submitted with reference to Section 30 of the Act whereunder the election programme i.e. last date for making nomination, the date for scrutiny, last date for withdrawal of candidatures, date of poll and the date before which the election shall be completed is fixed would indicate that last date for making nomination, date for scrutiny and the last date for withdrawal of candidature cannot be fixed on a public holiday and with reference to the said provision it is submitted that Returning Officer ought not to have asked the petitioner to remove the defect in the nomination paper on 19-4-2009 which was a public holiday and thereby he has transgressed the provisions of the Act.

18. It is also submitted that the Returning Officer did not make any endorsement in the nomination paper of the petitioner either accepting or rejecting the same in front of the petitioner so as to enable the petitioner to know the factum of rejection including its cause.

19. Learned counsel for the petitioner further submitted that the nomination paper is to be presented between 11 A.M. to 3 P.M., the compact disc prepared during presentation and scrutiny of nomination reflects that the nomination papers as presented by some candidates have been accepted much later than 3 P.M., which is in contravention of the directions issued by the Election Commission of India and for such contravention of the direction of the Election Commission of India Returning Officer is worthy to be condemned.

20. Learned counsel for the petitioner next relied on the judgment of the Supreme Court in the case of Narendra Madivalapa Kheni Vs. Manikrao Patil and others, (1977) 4 Supreme Court Cases 16 and submitted that inclusion of names in the electoral roll after the last hour of the last date for filing nomination is illegal and not valid.

21. Learned counsel with reference to the judgment of the Supreme Court in the case of Union of India Vs. Association for Democratic Reforms and another, (2002) 5 Supreme Court Cases 294 submitted that the Supreme Court directed the Election Commission of India to call for information from the candidates on affidavit by issuing necessary instruction under Article 324 of the Constitution about (1) Conviction, acquittal or discharge (2) Whether or not a candidate is accused prior to 6 months of filing nomination and the assets and liability of his spouse and dependent and his education qualification. With reference to the judgment of the Supreme Court in the case of Peoples Union for Civil Liberties (PUCL) and another Vs.

Union of India and another, (2003) 4 Supreme Court Cases 399 it was submitted that in the said case Supreme Court framed the question as to whether little voter is not entitled to know the bio-data of his/her would be rulers, law makers or destiny maker of the nation and held that voter has fundamental right to know the antecedent of a candidate. Learned counsel for the petitioner with reference to the aforesaid two judgment in the case of Union of India and Peoples Union for Civil Liberties (supra) submitted that the candidate filing nomination for contesting the election is not to be identified physically, rather he has to be identified with reference to his bio-data given in form 26. Physical identification may be ascertained with respect to any cut mark, mark on body, complexion, height and physic etc. According to learned counsel such identification of the candidate is not the point in issue in the case in hand. It is submitted that if petitioner has not mentioned his correct age in the nomination form part-III the Returning Officer was not required to be too technical in view of the correct age of the petitioner mentioned in form 26 which was also supported by an affidavit and the other affidavit. In this connection, learned counsel also relied on Sub-section (4) of Section 36 of the Act which requires the Returning Officer not to reject any nomination paper on ground of defect which is not substantial in nature. Learned counsel submitted that in view of the correct age of the petitioner mentioned in form 26 his nomination paper was not required to have been rejected.

22. Learned counsel also relied on the judgment of the Supreme Court in the case of Pratap Singh Vs. Sri Krishna Gupta and others, AIR 1956 Spreme Court 140. It appears in the said case the appellant was a candidate for the office of President of the Municipal Committee. The respondents seven in number were also candidates. The nominations were made on forms supplied by the Municipal Committee but it turned out that the forms were old ones as the forms were not updated. Under the old Rules candidates were required to give their caste but subsequently the Rule was changed and instead of caste their occupation had to be entered. The only candidate who got himself abreast of the change was the first respondent. He struck out the word caste in the printed nomination form and then furnished his occupation as was required under the new Rules and not his caste. The other candidates including the appellant filled their nomination as they stood and entered their caste and not their occupation. The first respondent raised an objection before the Supervising Officer and contended that all other nominations were invalid and claimed that he should be elected as his was the only valid nomination paper the objection was overruled and election proceeded. The appellant secured the highest number of votes and was declared to be elected. The first respondent thereupon filed the election petition which

was dismissed holding that defect in the nomination paper of the appellant was not substantial and was curable. The judgment dismissing the election petition was reversed by the High Court relying on the judgment of the Supreme Court in the case of Rattan Anmol Singh (*supra*) holding that any failure to comply with any of the provisions set out in the various rules is fatal and that in such cases the nomination paper must be rejected. Supreme Court reversed the said judgment deprecating the tendency towards technicality : it is the substance that counts and must take precedence over mere form and distinguish the judgment rendered in the case of Rattan Anmol Singh (*supra*) after quoting the following passage in paragraph 11 of the said judgment :—

“If the Returning Officer had omitted the attestation because of some slip on his part and it could be proved that he was satisfied at the proper time, the matter might be different because the element of his satisfaction at the proper time, which is of the substance, would be there, and the omission formally to record the satisfaction could probably, in a case like that be regarded as an unsubstantial technicality”.

23. Learned counsel next referred to the judgment of the Supreme Court in the case of Sushil Kumar Vs. Rakesh Kumar, 2004 (1) PLJR 261. In the said case Returning Officer accepted the nomination paper of Rakesh Kumar who was below 25 years of age despite the written objection. Respondent succeeded in the election. The election petition was filed solely on the ground that respondent at the time of filing his nomination paper was not above the age of 25 years as mandatorily required under Article 173(b) of the Constitution was not entitled to file his nomination. The election petition, however, was dismissed. Supreme Court set aside the order of the High Court holding that respondent was not above the age of 25 years on the date of filing nomination he ought not to have been allowed to contest the election and his election is declared void.

24. Learned counsel then referred to the judgment of the Supreme Court in the case of Uttamrao Shivedas Jankar Vs. Ranjitsinh Vijaysinh Mohite Patil, (2009) 13 Supreme Court Cases 131. In the said case nomination paper of the election petitioner was rejected on the ground that the signature of his two of the proposers was not genuine which was challenged in the election petition, election petition was also dismissed without holding the trial. Supreme Court set aside the order of the High Court directing the High Court to consider the matter on merit by framing issues and calling for production of evidence in support of the case of the parties.

25. Learned counsel with reference to the judgment of the Supreme Court in the case of Navjot Singh Sidhu

Vs. State of Punjab and another, 2007(1) PLJR 329, paragraph-13 submitted that the Constitution of India and the Act provides for qualification, disqualification and not the identification of the candidate contesting the election except for submission of the bio-data by the candidate in compliance of the order of the Supreme Court in the case of Union of India Vs. Association for Democratic Reforms and People's Union for Civil Liberties Vs. Union of India (*supra*). It is submitted that if the candidate is qualified the question of correcting his age is not an issue of identification as the respondent has not taken such ground in his written statement.

26. Learned counsel submitted that Returning Officer while deposing in court has taken different grounds other than what has been mentioned in the impugned order rejecting the nomination paper dated 20-4-2009. It is also submitted that Supreme Court in the case of Mohindar Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others, (1978) 1 Supreme Court Cases 405, paragraph-8 held that when statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise, an order bad in beginning may by the time it comes to the court on account of challenge get validated by additional grounds later brought out. It is submitted that Returning Officer though taking supplementary grounds in his deposition has badly failed. The Deputy Election Officer R.W.-3 in paragraph-5 of his deposition has categorically contradicted the Returning Officer and stated that he never asked the election petitioner to correct his age indicated in the nomination paper.

27. Learned Counsel for the petitioner next referred to the judgment of the Supreme Court in the case of Anil Baluni Vs. Surendra Singh Negi, 2005(5) Supreme Court Cases 793. In the said case election petitioner attended the scrutiny and the Returning Officer made endorsement in the nomination paper as 'Vaidh'. Later the Returning Officer manipulated the nomination paper and wrote a before 'Vaidh', thus rejecting the nomination paper on the ground that form A and B were not submitted along with nomination paper, rather were submitted at 4.10 P.M. on the last day fixed for filing of nomination paper. During trial the election petitioner successfully proved the misconduct of the Returning Officer and the interpolation made by him as would appear from the records that form A and B were submitted one day before last day fixed for filing of nomination paper at 2.58 P.M. along with nomination paper. In view of the aforesaid facts the Supreme Court found that nomination paper completely filled up in prescribed format was delivered and the nomination was wrongly rejected. Learned Counsel for the petitioner submitted that in the present

case, the Returning Officer has fearlessly transgressed the boundaries of Sub-section-(6) of Section 36 of the Act as he did not make any endorsement either accepting or rejecting the nomination paper of the election petitioner and thereby kept the election petitioner in dark about the rejection of his nomination paper. It is submitted that Returning Officer further reflected his misconduct by not providing the election petitioner a copy of order of rejection, although requisition for obtaining certified copy on payment was filed. Learned Counsel further submitted that non-fulfilment of the requirement of law is distinct from furnishing half hearted information in the nomination paper. In this connection, he relied on the judgment of the Supreme Court in the case of Viveka Nand Giri Vs. Nawal Kishore Sahi, AIR 1984, Supreme Court 856, paragraphs-2, 5 and 6. The election petition was filed by the first respondent the defeated candidate only on the ground that nomination paper of another candidate Ram Kumar Jha was improperly rejected ignoring the fact that he had mentioned his correct age i.e. 33 years in the nomination paper contrary to his age indicated in the electoral roll i.e. 37 years. The Returning Officer, however, rejected the nomination paper of Ram Kumar Jha on the ground that there is difference in the age of Ram Kumar Jha between what has been mentioned in the electoral roll and the nomination paper. The High Court on consideration of the evidence found that no nomination paper could be rejected unless the defect is of substantial character and that the difference in the age of R.K. Jha as given in the electoral roll and the nomination paper is not a material error and no opportunity was given to the candidate R.K. Jha to remove the defect though Sub-section-(4) of Section 33 of the Act lays down that on the presentation of the nomination paper the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidates and their proposers as entered in the nomination paper are the same as those entered in the electoral roll. The High Court held that rejection of the nomination paper of Ram Kumar Jha by the Returning Officer was improper and set aside the election of a returned candidate. Supreme Court affirmed the judgment of the High Court observing that the difference in the age of the candidate Ram Kumar Jha as entered in the electoral roll and the nomination paper would fall under the category of inaccurate description mentioned in proviso to Sub-section-(4) of Section 33 of the Act and it is obligatory on the part of Returning Officer to have it corrected or, to overlook it having regard to the language of the proviso. The Supreme Court further observed that difference of four years in the age of the candidate Ram Kumar Jha as stated in the nomination paper and the electoral roll is not an error of substantial character as he was qualified to contest the election by taking into account any of the age either stated in the nomination paper or in the electoral roll.

28. Learned Counsel for the petitioner with reference to the judgment of the Supreme Court in the case of Brijendralal Gupta and another Vs. Jwalaprasad and others, AIR 1960 Supreme Court 1049, paragraphs 9,17 submitted that in the said judgment Supreme Court began with following quotation :—

“Does the failure of a candidate to specify his age as required by the prescribed form of the nomination paper amount to a defect of a substantial character under Section 36(4) of the Representation of the People Act, 43 of 1951 (hereinafter referred to as the Act) ? That is the point of law which arises for our decision in the present appeal.”

The election petitioner in the said case had not filled the age column of the nomination paper. Incomplete nomination form according to the learned counsel for the petitioner renders the nomination paper incomplete, invalid and fit for rejection after scrutiny under Section 36 of the Act. In the instant case, however, election petitioner has written in the age column that he has completed 25 years of age and as such was qualified to contest the election and the nomination paper should not have been rejected.

29. Learned Counsel for the petitioner with reference to the judgment of the Supreme Court in the case of Ram Phal Kundu Vs. Kamal Sharma, (2004) 2 Supreme Court Cases 759, paragraphs 7, 13 and Chief Information Commissioner and another Vs. State of Manipur and another, 2012(1) PLJR SC 313, paragraphs-35, 45 submitted that in part III of the nomination paper candidate is not required to specify his age as neither the Constitution of India nor the Act nor the Rule nor the Handbook for Candidate, Returning Officer nor the nomination form require that the actual age of the candidate should be mentioned in part III of the nomination form.

30. Learned Counsel with reference to the judgment of the Supreme Court in the case of G.V. Sreerama Reddi and another Vs. Returning Officer and others, (2009) 8 Supreme Court Cases 736, paragraphs-3, 4 and Ram Sukh Vs. Dinesh Aggrawal (2009) 10 Supreme Court Cases 541, paragraph-8 submitted that Act is a self contained code and is required to be read and followed *stricto sensu*. He further submitted that qualification for membership of Parliament, as provided under Article 84 of the Constitution, Sub-section-(2) of Section 36 of the Act read in juxtaposition with Clause 12.1 of the Handbook for the Candidates would indicate that the candidate has to mention his correct age in part III of the nomination paper only in case he finds that his age has not correctly been mentioned in the electoral roll, otherwise he may also indicate in part III of the nomination paper that he has attained the qualifying age. It is submitted that in the instant case, age of the petitioner was correctly stated in the electoral roll, as such, he stated in part III of the nomination paper that he has attained the qualifying age i.e. 25 years.

31. Learned Counsel for the petitioner finally relied on the judgment of the Supreme Court in the case of Nandiesha Reddi Vs. Kavitha Mahesh, (2011) 7 Supreme Court Cases 721 paragraphs-7, 8 and 37. It appears in the said case the election petition was filed on the ground of improper rejection of the nomination paper under Section 100 (1) (c) of the Act. The returned candidate filed petitions under Order 6 Rule 16 of the Code of Civil Procedure stating that the election petition does not contain material facts and another petition under Sections 83, 86 of the Act read with Order 7 Rule 11 of the Code of Civil Procedure for dismissal of the election petition. Both the aforesaid petitions were dismissed by the High Court, which was challenged before the Supreme Court. Supreme Court dismissed the appeal holding that the ground of improper rejection of the nomination paper shall be considered during the trial of the election petition.

32. Learned Counsel for the petitioner with reference to the aforesaid case law submitted that the sole ground taken in the election petition is under Section 100(1)(c) of the Act and there being neither endorsement or rejection over the nomination paper of the petitioner nor the copy of the order rejecting the nomination paper was provided to the petitioner in spite of requisition for grant of certified copy on payment or by way of free copy the rejection of nomination paper is violative of Sub-section(6) of Section 36 of the Act which specifically require the Returning Officer to endorse on each nomination paper his decision accepting or rejecting the same and if the nomination paper is rejected then to record in writing a brief statement of reasons for such rejection. It is submitted that petitioner stated in part III of his nomination paper that he has completed 25 years of age which is in accordance with Article 84 of the Constitution and the Returning Officer should have accepted the same in view of the provisions contained in Sub-section(2)(a) of Section 36 of the Act. Learned counsel further submitted that in view of Clause-12.1 of the Handbook for the Candidate a candidate has to write his correct age, provided his age has not been correctly mentioned in the electoral roll. In the instant case, the age of the petitioner was correctly mentioned in the electoral roll. As such he was not required to have mentioned his correct age in part III (a) of the nomination paper. Learned Counsel for the petitioner further submitted that the Returning Officer in his evidence stated that he granted opportunity to the petitioner through Deputy Election Officer to correct his age stated in part III of the nomination paper on a public holiday, which has been contradicted by the Deputy Election Officer who categorically stated that he never asked the petitioner to correct his age in the nomination paper. It is submitted that in view of the contradictory evidence of Returning Officer and the Deputy Election Officer about giving opportunity to the petitioner to correct his age as

mentioned in part III of the nomination paper the conduct of Returning Officer is unforgiving and should be termed as breach of both the law and duty. It is further submitted that the Returning Officer while proceeding with the scrutiny of nomination paper did not act in the manner provided in the Act, as he did not allow the candidates to collectively guide him so as to avoid any unwarranted situation. It was also obligatory upon the respondent or his representative during the scrutiny to verify the nomination paper of the election petitioner and to ask the Returning Officer to accept the nomination paper on endorsement which could not be done and the nomination paper of the election petitioner was improperly rejected.

33. Learned counsel for the sole respondent with reference to paragraphs-28, 30 of the election petition submitted that election petition does not contain material facts, namely, the facts and circumstances leading to rejection of the nomination paper of the election petitioner including the facts about the manner, mode and method said to have been adopted by the Janta Dal (United) party in association with Bhartiya Janta Party for procuring assistance of the Returning Officer for the furtherance of the election prospect of the sole respondent. It is submitted that facts which led to rejection of the nomination paper of the election petitioner is totally missing from the election petition. Petitioner has merely quoted the provisions of law contained in Section 100(1) (c) of the Act and as the petitioner has not indicated any facts indicating as to how his nomination paper was improperly rejected by merely citing the provisions of law, it cannot be said that the petition contains a concise statement of the material facts, as is required under Sub-section(1)(a) of Section 83 of the Act and for failure to provide concise statement of the material facts in paragraph-30 of the election petition and full particulars of corrupt practice in paragraph-28 of the election petition, the election petition is fit to be rejected in exercise of power conferred under Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure. Reliance in this connection was placed over the judgment of the Supreme Court in the case of Samant N. Balakrishna etc. Vs. George Fernandez and Others, AIR 1969 Supreme Court 1201 and Azhar Hussain Vs. Rajiv Gandhi, AIR 1986 Supreme Court 1253.

34. Learned counsel for the respondent next submitted that the Returning Officer passed a detailed order dated 20-04-2009 on the date fixed for scrutiny rejecting the nomination paper of the election petitioner. perusal whereof would indicate that the petitioner did not state his correct and present age in part III of his nomination paper. Failure of the petitioner to declare his correct and present age in part III of his nomination paper is a vital and substantial defect, which entails rejection of the nomination paper. In this connection, learned counsel for the respondent further pointed out

with reference to paragraph-12.1 (a) of the Handbook for the candidates issued by the Election Commission of India for the 2009 General Election that a candidate for election to the House of the People or State Legislative Assembly must not be less than 25 years of age. He should give his correct age in the nomination paper, if the candidate finds that his age is not correctly mentioned in the electoral roll, he should give only his present age in the nomination paper and not the wrong age as shown in the electoral roll. It is further submitted by the counsel for the respondent that the Handbook for the Returning Officer issued by the Election Commission of India under Chapter 'Scrutiny' requires the Returning Officer to reject the nomination paper of a candidate for omitting to specify his age in the nomination paper. It is submitted that as the petitioner stated in part III of his nomination paper that he has completed 25 years of age on the date of nomination the Returning Officer during scrutiny having found such statement to be incorrect rightly rejected the nomination paper of the election petitioner. In support of the aforesaid submission learned counsel for the respondent relied on the judgment of the Supreme Court in the case of Brijendralal Gupta and Another Vs. Jwalaprasad and Others, AIR 1960 Supreme Court 1049 and submitted that for failure of the petitioner to specify his correct age in part III of his nomination paper has rightly been rejected and the plea raised in paragraph-30 of the election petition that nomination paper of the election petitioner has been improperly rejected is wholly misconceived and the election petition is fit to be rejected.

35. Having noted the case of the parties as pleaded in the election petition, written statement as also having considered the evidence led and the submissions made on their behalf, it is thought appropriate to first consider the import of the relevant provisions of the Act before proceeding to adjudicate the issues involved in the matter. Section 30 of the Act requires the Election Commission to publish notification in the official gazette appointing the last date for making nominations, the date for scrutiny of the nominations, the date for withdrawal of candidatures, the date or dates on which a poll shall be held as also the date by which the election shall be completed. It further appears from the wordings of the said section that if the last date for making nominations, scrutiny of nominations, withdrawal of candidatures is a public holiday then the last date for making nominations, scrutiny of nominations and withdrawal of candidatures shall be the next succeeding day which is not a public holiday. Section 33 provides for presentation of nomination paper and requirements for a valid nomination. Section 33(1) provides that on or before the date appointed under Clause (a) of Section 30 each candidate shall either in person or by his proposer between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the Returning Officer at the place

specified in this behalf in the notice issued under Section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the Constituency as proposer. In the event, the candidate is not set up by a recognized political party his nomination paper is required to be subscribed by 10 proposers being electors of the Constituency. Sub-section (2) of Section 33 of the Act lays down that a candidate shall not be deemed to be qualified to be chosen to fill a reserved seat unless his nomination paper contains a declaration prescribed by it. Sub-section (3) of Section 33 deals with the case of a candidate who having held any office referred to in Section 9 of the Act has been dismissed from service and a period of five years has not elapsed since the dismissal and lays down that the nomination paper of such a person shall be accompanied by a certificate as specified Sub-section (4) of Section 33 of the Act requires that on the presentation of a nomination paper the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer(s) as entered in the nomination paper are the same as those entered in the electoral roll. The proviso to this sub-section requires the Returning Officer to permit any clerical or technical error in the nomination paper in regard to the said names or numbers to be corrected and where necessary it authorizes him to direct that any clerical or printing error in the said entry shall be overlooked. Section 36 of the Act deals with scrutiny of nominations, authorizes the Returning Officer to hold an enquiry, prescribes the procedure to be followed by him in holding such an enquiry, requires him to endorse his decision on the points raised in the scrutiny and to prepare a list of validly nominated candidates i.e. to say whose nominations have been found valid and to affix the list containing the names of the validly nominated candidates on the notice board. Section 36(1) provides that on the date fixed for the scrutiny of nomination paper under Section 30 the candidate and the other persons specified in it may attend at such time and place as the Returning Officer may appoint and shall give them all reasonable facilities of examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in Section 33 of the Act. Section 36(2) deals with examination of nomination papers by the Returning Officer and it provides that the said officer shall decide all objections which may be made to any nomination and may either on such objection or on his own motion after such summary enquiry, if any as he thinks necessary reject any nomination paper on any of the following grounds (a) that the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable i.e. Articles 84, 102, 173 and 191 of the Constitution and Part-II of the Act (b) that there has been a failure to comply with any of the provisions of Section 33 or 34 or (c) that the signature of the candidate

or the proposer on the nomination paper is not genuine. Sub-section (4) of Section 36 lays down that the Returning Officer shall not reject any nomination paper on the ground of any defect, which is not of a substantial character. Sub-section (5) of Section 36 prescribes the procedure for the scrutiny and Sub-section (6) of Section 36 requires that the Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same. In case of rejection Returning Officer is further required to record in writing a brief statement of his reasons for such rejection. Sub-section (7) of Section 36 provides that for the purposes of this Section, a certified copy of an entry in the electoral roll for the time being in force for a Constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that Constituency, unless it is proved that he is subject to a disqualification mentioned in Section 16 of the Representation of the People Act, 1950. Sub-section (8) of Section 36 of the Act requires the Returning Officer to prepare a list of validly nominated candidate and to fix the list on the notice board. It is thus, clear that Section 33 of the Act requires that a nomination paper completed in the prescribed form and signed by the candidate and the elector(s) of the Constituency as proposers be delivered to the Returning Officer on or before the last appointed day for making nomination. Besides the aforesaid three sections of the Act, this Court is also required to notice Sections 80, 81, 83, 86 and 100 of the Act, which provides for presentation of election petition calling in question any election on one or more of the grounds specified in Section 100(1) and 101 of the Act by any candidate at such election or any elector. Sub-section (1)(a), (b) of Section 83 of the Act provides that an election petition shall contain a concise statement of the material facts on which the petitioner relies and full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date, place of the commission of each corrupt practice.

36. In the instant case, election petitioner has alleged in paragraph-28 of the election petition that he was totally prevented from contesting election by virtue of Janta Dal (United) the ruling party in the State in association with the Bhartiya Janta Party getting assistance from the Returning Officer for furtherance of election prospect of the sole respondent by dint of latent administrative pressure at one end or the other else the petitioner if nominated for contesting election would have come as returned candidate. In paragraph 30 of the election petition election petitioner asserted that his nomination paper filed for contesting election from 30-Patna Sahib Parliamentary Constituency has been improperly rejected.

37. In support of the contents of paragraph-28 election petitioner has neither asserted in paragraph-28 nor has led any evidence to establish that on account of latent administrative pressure exercised by the ruling Janta Dal (United) party Returning Officer of 30-Patna Sahib Parliamentary Constituency with the consent of respondent acted for furtherance of his election prospect and thereby for the failure of the election petitioner to comply Sub-clause(1)(b) of Section 83 read with Sub-section(7) of Section 123 of the Act, this Court is unable to rely on the averments made in paragraph-28 of the election petition. As regards the averments made in paragraph-30 of the election petition that nomination paper of the election petitioner was improperly rejected the objection raised by the respondent that the averments made in paragraph-30 of the election petition is merely quotation of Section-100(1)(c) and not a concise statement of the material facts on which the petitioner relies as the facts which persuaded the Returning Officer to reject the nomination paper of the petitioner has not been stated in paragraph-30 of the election petition is to be rejected in view of the fact that nomination paper of the petitioner having been rejected and such fact has been stated in the paragraph, as such, according to this Court concise statement of the material fact on which the petitioner relies as required under Section 83(1)(a) of the Act is mentioned in the paragraph. Reliance placed by the counsel for the respondent over the judgment of the Supreme Court in the case of Samant N. Balakrishna and Azhar Hussain (*supra*) is misconceived. It may be stated here that in both the aforesaid reported cases finding with regard to Section 83 of the Act and Order 7 Rule 11 of the Code of Civil Procedure was recorded by the Supreme Court taking into account the allegations of corrupt practice and in that regard it was observed that an election petition can be and must be dismissed under the provisions of Code of Civil Procedure if the mandatory requirement enjoined by Section 83 of the Act to incorporate the material facts and particulars relating to alleged corrupt practice in the election petition are not complied with.

38. Having held as above, now, I proceed to consider the validity of the order dated 20-4-2009 passed by the Returning Officer rejecting the nomination paper of the election petitioner on the ground that he mentioned his incorrect age in part III of the nomination paper. Learned counsel for the petitioner submitted that petitioner had declared in part III of his nomination paper that he has completed 25 years of age which is the qualifying age for contesting election to the House of People as per Article 84 of the Constitution and in appreciation of such fact his nomination paper should have been accepted as in form 26 supported by an affidavit as also in the other affidavit appended with the nomination paper petitioner had mentioned his correct age. Learned counsel in this connection also referred to paragraph-12.1 of the Handbook

for Candidates issued by the Election Commission of India for participating in 2009 General Election and submitted that election petitioner was required to have mentioned his correct age in part III of his nomination paper provided there was incorrect entry about his age in the electoral roll. It was submitted that as the entry in the electoral roll about the age of the petitioner was correct he mentioned in the age column of part III of nomination form that he has attained the qualifying age for contesting the impugned election and in such view of the matter there should not be any difficulty for this Court to hold that nomination paper of the election petitioner has been improperly rejected. Aforesaid submission has to be considered in the light of the provisions contained in Sections 33 and 36 of the Act. On presentation of the nomination paper completed in the prescribed form the Returning Officer or the Authorized Officer is to satisfy himself about the names and electoral roll numbers of the candidate and his proposers, as entered in the nomination paper are the same as those entered in the electoral roll. Proviso to this sub-section requires the Returning Officer to permit any clerical or technical error in the nomination paper in regard to the said names or numbers to be corrected and where necessary it authorizes Returning Officer to direct that any clerical or printing error in the said entry shall be overlooked. During scrutiny of the nomination paper the Returning Officer is to examine the nomination paper and to decide all objections which may be made to any nomination or on his own motion after summary enquiry as he thinks necessary regarding the following grounds (a) that the candidate either is not qualified or is disqualified (b) that there has been a failure to comply with any of the provisions of Section 33 or 34 or (c) that the signature of the candidate or the proposer on the nomination paper is not genuine. In the instant case. Returning Officer having examined the nomination paper of the petitioner on the date of scrutiny i.e. 20-4-2009 found that he presented nomination paper which was not complete in the prescribed form as petitioner had not specified his correct age in part III of the nomination paper, petitioner having mentioned in part III of the nomination paper that he has completed 25 years of age which was not his age on the date of nomination. Failure to mention the age in the appropriate column of the nomination form is a defect of substantial nature, as has been held by the Supreme Court in the case of Brijendralal Gupta (*supra*). It may be stated here that an enquiry which is necessary under Sub-section(2)(a) of Section 36 of the Act may and can be held for instance in cases where nomination paper shows the age of the candidate as above 25 years but an objection has been raised that in fact he is below 25 years of age and as such incompetent to contest the election under Article 84 of the Constitution. In the instant case, petitioner having not furnished his correct age in part III of the nomination form which was the appropriate form for indicating the age of the candidate, petitioner submitted incomplete nomination form and

thereby failed to comply with the provisions of Sub-section (1) of Section 33 of the Act, which require the candidate to deliver the nomination paper completed in the prescribed form to the Returning Officer before the appointed date. Reliance placed by the learned counsel for the petitioner on form 26 and the other affidavits to submit that petitioner indicated his correct age in form 26 and the other affidavit and in such view of the matter placing reliance over proviso to Sub-section (4) of Section 33 the incorrect age mentioned in part III of the nomination form should have been corrected or overlooked is wholly misconceived as while receiving the nomination form the Returning Officer or Authorized Officer is required to satisfy himself about the electoral roll number of the candidate and his proposers as entered in the nomination paper are same as those entered in the electoral roll and technical or printing error or inaccurate description in the electoral roll or in the nomination paper is to be corrected/overlooked. None of the provisions of Section 33 or 36 authorize the Returning Officer to ignore the incorrect age mentioned in the appropriate column of the nomination form i.e. part III. It may further be stated here that in view of Rule 4 of Conduct of Election Rules, 1961 (hereinafter referred to as the Rules) also candidate has to deliver the nomination form completed in the prescribed form before the last appointed date for making nomination. The nomination forms are also part of Rule 4 which does not include form 26. Proviso to Rule-4 further provide that failure to complete or defect in completing the declaration as to the symbol in the nomination paper in form 2A or 2B shall not be deemed to be a defect of substantial nature within the meaning of Section 36(4) of the Act. Rule 4A of the aforesaid Rules require the candidate or his proposer, as the case may be to also deliver to the Returning Officer an affidavit sworn by the candidate before a Magistrate of first class or a notary in form 26 giving his antecedent but the said form 26 is not the part of nomination paper. In view of the provisions of Rule 4, 4A of the Rules there is no difficulty for this Court to conclude that form 26 submitted along with nomination paper is an addendum to the nomination paper. In the instant case, petitioner delivered the nomination paper to the Returning Officer before the appointed date which was incomplete as the same did not contain statement about the age of the petitioner on the date of nomination and Returning Officer had no option but to reject the same for failure of the petitioner to deliver his nomination paper completed in the prescribed form to the Returning Officer before the appointed date. Reliance placed by the learned counsel for the petitioner over the judgment of the Supreme Court in the case of Viveka Nand Giri (*supra*) is wholly misconceived, as in the said case rejection of nomination paper no. 42 of Ram Kumar Jha was on the ground that there was discrepancy in the

age indicated by Sri Jha in part III of the nomination paper and the electoral roll as in part III of the nomination paper R.K. Jha had indicated 33 years of age but in the electoral roll it appeared to be 37 years. On consideration of the evidence available on record Superior Courts found that no nomination paper could be rejected unless the defect is of substantial character and that the difference in the age of the candidate as given in the electoral roll and the nomination paper is not material error. The Superior Courts in the said case did not approve of the rejection of nomination paper no.42 of Ram Kumar Jha observing that difference in the age of the candidate as entered in the electoral roll and the nomination paper would fall under the category of inaccurate discrepancy mentioned in proviso to Sub-section-(4) of Section 33 of the Act and that it was obligatory on the part of the Returning Officer to have it corrected or to overlook it having regard to the language of the proviso as Ram Kumar Jha had completed 33 years of age on the date of nomination. In the instant case, nomination paper of petitioner was rejected after scrutiny under Sub-section (2) (b) of Section 36 for failure of the petitioner to comply with the provisions of Section 33 of the Act as he failed to deliver to the Returning Officer a nomination paper completed in the prescribed form as the nomination paper delivered by the petitioner did not contain his age on the date of nomination, whereafter Returning Officer passed order dated 20-4-2009, as is required of him under Sub-section (6) of Section 36 of the Act.

39. Before parting with this order, I may also notice that there is contradiction in the evidence of R.W.-2 and 3 about granting opportunity to the petitioner to correct his age indicated in part III of the nomination paper as according to R.W.-2 petitioner was granted such opportunity on 19-5-2009 through R.W.-3 the Deputy Election Officer but in paragraph-5 of the cross-examination R.W.-3 stated that he never asked the election petitioner to correct his age indicated in the nomination paper. Aforesaid contradiction in the oral evidence of the official witnesses may not help the petitioner as petitioner having not mentioned his age on the date of nomination in part III of the nomination form delivered incomplete nomination form to the Returning Officer before the appointed date and his nomination was fit to be rejected in view of Section 36(2)(b) of the Act for the failure of the petitioner to comply with Section 33 of the Act.

Patna High Court, Patna

Dated the 5th September, 2012

Rajesh, A.F.R.

Sd/-
(V. N. SINHA, J)
[No. 82/BR/(6/2009)/2012]
By Order,
HARBANS SINGH, Secy.

नई दिल्ली, 12 दिसम्बर, 2012

आ.अ. 45.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग 2009 की निर्वाचन अर्जी संख्या 18 में इलाहाबाद उच्च न्यायालय के तारीख 18 अक्टूबर, 2012 के निर्णय को एतद्वारा प्रकाशित करता है।

(निर्णय अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/उ.प्र.-लो.स./18/2009 (इला.)]

आदेश से,

आर. के. श्रीवास्तव, प्रधान सचिव

New Delhi, the 12th December, 2012

O.N. 45.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgement dated 18th October, 2012 of the High Court of Judicature at Allahabad in Election Petition No. 18 of 2009.

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Election Petition No.18 of 2009

(Under Section 80, 80-A/81 of the Representation of People Act, 1951)

District : Badaun

Dharam Yadav alias D.P. Yadav,
S/o Shri Tej Pal,
R/o House No. 140-Kha, Mohalla Jahangirabad,
Ansh Sahswan, District Badaun.

... Election Petitioner

Versus

1. Dharmendra Yadav S/o Shri Abhay Ram, R/o Village & Post Saifaee, District Etawah.
2. Saleem Iqbal Sherwani S/o Shri M. R. Sherwani, R/o 34, Sarojani Naidu Marg, Allahabad.
3. Ajeet Singh Yadav S/o Shri Virendra Singh, R/o 25. Pathakpur, Tehsil Gunnaur, District Badaun
4. Javitree Devi wife of Shri Virendra Pal, R/o Mohalla Jalandhari Sarai, Badaun, District Badaun.
5. Brij Pal Singh Shakya S/o Shri Dina Nath Shakya, R/o Mohalla Bhadwarganj, Ujhani. District Badaun.
6. D.K. Bhardwaj S/o Shri Krishna Dutt Bhardwaj, R/o Mohalla Jawaharpuri, City Badaun, District Badaun.

7. Anupam Sharma S/o Shri Ram Adhar Sharma,
R/o Purana Barf-Khana, Civil Lines Badaun,
District Badaun.
8. Dharmendra Yadav S/o Shri Nand Kishore,
R/o 102, Udranpur Azmat Nagar, Gunnaur,
District, Badaun.
9. Bhagwan Singh S/o Shri Khushi Ram,
R/o Village Bichaula Bhood, Post Patariya,
Tehsil Gunnaur, District Badaun.

... Respondents

Court No. 58

Case : Election Petition No. 18 of 2009

Petitioner : Dharam Yadav Alias D.P.Yadav

Respondent : Dhamendra Yadav & others

**Petitioner Counsel : In Person, Arvind Mishra, N.K.
Pandey, Sudha Pandey**

Respondent Counsel : Saral Srivastava

Hon'ble Sibghat Ullah Khan, J.

Heard learned counsel for election petitioner and learned counsel for respondent No.1, the elected candidate.

Election petitioner has filed Civil Misc. Withdrawal Application No. 253255 of 2012 on 28-08-2012 under Sections No.109 and 110 of Representation of the People Act, ,1951 supported by his own affidavit for Withdrawal of the election petition. Sections 109 & 110 of the Act are quoted below :

“109. Withdrawal of election petitions.—

(1) An election petition may be withdrawn only by leave of the High Court.

(2) Where an application for withdrawal is made under sub-section (1) notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and, shall be published in the Official Gazette.

110. Procedure for withdrawal of election petitions.-

(1) If there are more petitioners than one, no application to withdraw an election petition shall be made except with the consent of all petitioners.

(2) No application for withdrawal shall be granted if, in the opinion of the High Court such application has been induced by any bargain or consideration which ought not to be allowed.

(3) If the application is granted-

(a) the petitioner shall be ordered to pay the costs of the respondents therefore incurred or such portion thereof as the High Court may think fit;

(b) the High Court shall direct that the notice of withdrawal shall be published in the Official Gazette and in such other manner as it may specify and thereupon the notice shall be published accordingly;

(c) a person who might himself have been a petitioner may within fourteen days of such publication, apply to be

substituted as petitioner in place of the party withdrawing, and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the High Court may deem fit”.

On 11.09.2012 following order was passed in this election petition on the order sheet :

“S/Sri N.K. Pandey and Anshul Nigam, learned counsel have filed this withdrawal application under Section 109 and 110 of Representation of People Act 1951 on behalf of sole petitioner after serving the copy of the same upon Sri Shivam Yadav, learned counsel appearing for respondent no. 1. Sri S.P. Gupta, learned senior counsel also appears for respondent No. 1. Sri S. P. Gupta. learned senior counsel has not opposed the application, however, he has Pointed out that formalities mentioned under Section 109 of the Act are to be completed before leave may be granted by the Court for withdrawing the election petition.

Accordingly, list the application on 8.10.2012. Meanwhile learned counsel for the petitioner applicant shall take necessary steps as provided under Section 109 of the Act promptly so that on the next date all the formal as mentioned in the said Section are completed.

Office is directed to supply requisite notice etc. to the learned counsel for the petitioner within 48 hours if possible or by maximum within three days from the date on which learned counsel for the petitioner approaches the office for getting necessary papers for publication of the notice in the gazette.

Notice shall also be published in Daily Hindi News paper Amar Ujala or Dainik Jagaran, Bareilly edition.”

Thereafter, notice was published in the Official Gazette of U.P. dated 29.09.2012 (on page-396) which has been placed on record. Information/notice has also been published in daily Hindi newspaper ‘Dainik Jagran’ dated 06-10-2012 published from Bareilly. A copy of the newspaper has also been placed on record. No one has filed, any objection. learned counsel for respondent No.1 not only does not oppose the withdrawal of the election petition but fully supports the same also. Learned counsel for the respondent No. 1 also states that no cost need be awarded to respondent No.1 in terms of Section 110(3)(a) of Representation of People Act.

Accordingly, leave to withdraw the election petition is granted Application for withdrawal is allowed, and Election Petition is dismissed as withdrawn.

Order Dated : 18-10-2012

Sd/-

SIBGHAT ULLAH KHAN, J.

[No. 82/UP-HP/18/2009 (Alld.)]

By Order,

R. K. SRIVASTAVA, Principal Secy.